REMARKS

In the Office Action, the Examiner withdrew the enablement and written description rejections but maintained the anticipation rejections and the nonstatutory obviousness-type double patenting rejections. Each of the maintained rejections is addressed separately below. In view of the amendments noted above, the 37 CFR 1.132 declaration submitted in connection with the previous response, and the remarks below, reconsideration of the merits of this patent application is respectfully requested.

No extension of time is believed to be necessary. However, if any extension of time is required in this or any subsequent response, please consider this to be a petition for the appropriate extension and a request to charge the petition fee to Deposit Account No. 17-0055.

Claim amendments

New claims 29-40 are added. New claim 29 corresponds to claim 1 with an additional dosage limitation supported by Table 1 of the specification wherein the dosage of 0.6 g/kg is shown and the highest dosage of 2.4 g/kg is also shown. Claim 29 further specifically recites the oral route of administration. New claims 30 and 31 correspond to claim 1 with an additional limitation that the improvement in body weight uniformity is by at least 0.5 and 0.8, respectively, as measured by a decrease in the coefficient of variation for the body weights of the group of animals. Support for new claims 30 and 31 can be found at the last sentence of paragraph [00018] in the application. New claims 32-40 correspond to claims 5-10, 12, 25, and 27, respectively. Claims 2-4 and 11 are canceled. Claims 13-24, 26, and 28 directed at a method of increasing carcass yield are also canceled.

Anticipation rejections under 35 U.S.C. § 102 (b) over U.S. Patent No. 6,213, 930 and U.S. Patent No. 6,383,485

1. The Examiner's rejection.

The Examiner rejected claims 1, 5-10, 12, 13, 17-22, and 24-28 as being anticipated by U.S. Patent No. 6,213, 930 or U.S. Patent No. 6,383,485. In particular, the Examiner refers to the previous office action to allege that improvement in body weight uniformity and increased

carcass yield would be inherently achieved by practicing the methods taught by U.S. Patent No. 6,213, 930 and U.S. Patent No. 6,383,485.

With respect to the applicant's argument supported by the 37 CFR 1.132 declaration that the prior art does not administer sufficient antibody to observe improved body weight uniformity or carcass yield, the Examiner asserts that the argument is not persuasive because the dosage limitations argued by the applicant are not in the claims.

With respect to claims 27 and 28 having the additional limitation of observing an improvement in body weight uniformity or carcass yield, the Examiner asserts that as part of the administration process a skilled artisan would need to observe the animals and therefore the observing step is not giving patentable weight.

2. Claims 1, 5-10, 12, 25, and 27.

The Examiner asserts that neither the patented claims nor the instant pending claims recite any dosage to be administered. Applicant respectfully disagree. Instant pending claim 1 recites the dosage of an amount sufficient to improve body weight uniformity. While no specific numbers is mentioned in instant pending claim 1, it nevertheless limits the dosage to an amount sufficient to improve body weight uniformity. According to the Examiner, the patented claims do not recite any dosage and therefore cannot, as a genus, anticipate the dosage species of an amount sufficient to improve body weight uniformity recited in instant pending claim 1.

The only other disclosure on dosage in U.S. Patent No. 6,213, 930 and U.S. Patent No. 6,383,485 is 0.0-0.5 g dietary dried egg yolk (containing anti-PLA_2 antibodies) per kg feed (0% to 0.05% by weight). See column 4, the first paragraph under "EXAMPLE" of both said U.S. patents. As discussed in the previous response supported by the 37 CFR 1.132 declaration submitted therewith, said dosage disclosed by the prior art patents does not lead to improvement in body weight uniformity and therefore cannot inherently anticipate instant pending claim 1 and its dependent claims.

For the above reasons, withdrawal of the anticipation rejections is respectfully requested.

3. Claim 29.

New claim 29 recites a dosage limitation that is not taught by U.S. Patent No. 6,213, 930 or U.S. Patent No. 6,383,485. Therefore, new claim 29 is not anticipated by U.S. Patent No. 6,213, 930 or U.S. Patent No. 6,383,485.

4. Claims 30-40.

New claims 30 and 31 recite a dosage limitation, i.e., an amount sufficient to improve body weight uniformity by at least 0.5 and 0.8, respectively, as measured by a decrease in the coefficient of variation for the body weights of the group of animals. As discussed above, the patented claims do not recite any dosage according to the Examiner and therefore cannot, as a genus, anticipate the dosage species recited in new claims 30 and 31 (i.e., an amount sufficient to improve body weight uniformity by at least 0.5 and 0.8). Also as discussed above, the disclosed dosage of 0.0-0.5 g dietary dried egg yolk (containing anti-PLA_2 antibodies) per kg feed (0% to 0.05% by weight) in U.S. Patent No. 6,213, 930 and U.S. Patent No. 6,383,485 does not lead to improvement in body weight uniformity, much less by at least 0.5 and 0.8 as recited in new claims 30 and 31. Therefore, new claims 30-40 are not anticipated by U.S. Patent No. 6,213, 930 or U.S. Patent No. 6,383,485.

5. Claims 27 and 40.

With respect to claims 27 having the additional limitation of observing an improvement in body weight uniformity, the Examiner asserts that as part of the administration process a skilled artisan would need to observe the animals and therefore the observing step is not giving patentable weight.

Applicant respectfully notes that body weight uniformity is not like dark or light hair color wherein the result can be readily observed as part of the administration process. As discussed in paragraph [00018] of the application, observing an improvement in body weight uniformity involves collecting body weight data and calculating a parameter that reflects body weight uniformity. The methods disclosed in U.S. Patent No. 6,213, 930 and U.S. Patent No. 6,383,485 relate to enhancing growth/feed behavior and reducing gastrointestinal inflammation. Even if body weight data is collected, the methods of U.S. Patent No. 6,213, 930 and U.S. Patent

No. 6,383,485 do not require or suggest calculating a parameter that reflects body weight uniformity such as the coefficient of variation. Therefore, an improvement in body weight uniformity would not be observed. Therefore, claims 27 and 40 are not anticipated by U.S. Patent No. 6,213, 930 or U.S. Patent No. 6,383,485 further for this reason.

Nonstatutory obviousness-type double patenting rejections

The Examiner rejected claims 1, 5-10, 12, 13, 17-22, and 24-28 on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1-11 of U.S. Patent No. 6,213, 930 and claims 1-11 of U.S. Patent No. 6,383,485. In particular, the Examiner refers to the previous office action to allege that although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims anticipate the instant invention. The Examiner further refers to the reasons stated in the anticipation rejections to assert that the response filed by the applicant is not persuasive. Applicant respectfully traverses the rejection.

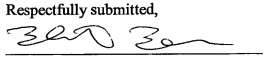
As already discussed in connection with the anticipation rejections above, the claims at issue are not anticipated by U.S. Patent No. 6,213, 930 or U.S. Patent No. 6,383,485. Just because an agent can enhance growth/feed behavior (U.S. Patent No. 6,213, 930) and reduce gastrointestinal inflammation (U.S. Patent No. 6,383,485) does not make it obvious that the agent can improve body weight uniformity in a group of animals. Accordingly, withdrawal of the non-statutory obviousness-type double patenting rejections is respectfully requested.

Summary

Having addressed each issue raised by the Examiner, claims 1, 5-10, 12, 25, 27, and 29-40 are believed to be in condition for allowance and a Notice of Allowance is respectfully requested. Should any issues remain outstanding, the Examiner is invited to contact

the undersigned at the telephone number appearing below if such would advance the prosecution of this application.

Respectfully submitted,



Zhibin Ren
Reg. No. 47,897
Attorney for Applicants
QUARLES & BRADY LLP
Milwaukee, WI 53202-4497
TEL (414) 277-5633
FAX (414) 271-3552

QBMKE\6195045.1